IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 690 OF 2005

Mahiboob Ibrahim Golandaj & Ors. ..Applicants.

V/s.

The State of Maharashtra .. Respondent.

Shri N.V.Pradhan with S.D. Khot for the Applicants.
Shri A. S. Gadkari, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 22, 2005

PC :-

. Heard the learned counsel for the parties. Perused the record.

2. The applicants have been arrested on 4th January, 2005 in connection with offence punishable under section 420 read with section 34 of IPC and sections 3 and 7 of the Essential Commodities Act. According to the applicants, there is no material to connect the applicants with the offence under sections 3 and 7 of the Essential Commodities Act. If that is lacking, question of invoking section 420 read with section 34 of the I.P.C., does not arise. This argument is canvassed on the basis of the relevant provisions, including the order issued under the Act, 1955, which has been pressed into service on behalf of the prosecution.

3. Besides, it is contended that as the offence is punishable with maximum 7 years sentence and the applicants are presently in the judicial custody and have already been subjected to extensive interrogation while in police custody, no purpose would be served by keeping the applicants in jail. Reliance is also placed on the orders passed by this court; dated 12th November, 2004 as well as 30th November, 2004, to contend that in the similar cases, the court has released the applicants on bail as the maximum sentence for alleged offence is 7 years subject to minimum sentence of 3 months and the applicants are already in jail for almost over 40 days and more particularly, when the custodial interrogation of the applicants is no more necessary.

4. It is not necessary for me to go in the wider questions raised by the applicants, regarding the application of provisions of sections 3 and 7 of the Essential Commodities Act. I am inclined to direct release of all the applicants on the argument that substantial investigation, in so far as applicants are concerned, is complete and as there is no need of custodial interrogation, no fruitful purpose would be served in keeping them in jail specially when the

maximum sentence is 7 years, which was the approach adopted in the similar cases by this court.

5. To get over this position, learned APP contends that the main accused from whom, the applicants have purchased kerosene in question is absconding since 6th January, 2005 and until he is arrested, there is no reason to grant bail to the present applicants. The fact that the prime accused from whom the applicants have purchased the kerosene in question is absconding by itself cannot be the basis for rejecting the bail application preferred by the present applicants. More over, it is not the prosecution case that the applicants are connected with the gang involving inter state offence, who are obviously working in transporting the kerosene to the designated places. Indeed, it is the prosecution case that the applicants themselves were found converting the blue kerosene to white kerosene, which was prohibited. So far as that aspect is concerned, obviously the investigation is complete and all the articles and items have been seized from the applicants. More over, it is relevant to note that the applicants 3 to 6 are only working with the applicant No.1, who is the owner of the truck. Taking over all view of the matter, in my opinion, all the

applicants deserve to be enlarged on bail but on imposing strict conditions in the following terms :-

(a) The Applicants are directed to be released on bail in connection with C.R.No. 7/2005, registered with Vijapurnaka Police Station, Solapur on executing personal bond by the Applicants Nos. 3 to 6 in the sum of Rs. 10,000/- (Rs. Ten thousand only) each and Applicants Nos. 1 and 2 on executing the personal bond in the sum of Rs. 50,000/- (Rs. Fifty thousand only) each. All the accused shall furnish two local sureties in the like amount.

(b) The applicants shall regularly report to the concerned investigating officer as and when called upon during the pendency of the trial.

(c) The applicants shall not leave the jurisdiction of the Solapur City without prior intimation to the investigating officer and the trial court.

(d) The Applicants shall extend full co-operation to the investigating officer as and when called upon as well as for early disposal of the trial. If the

trial court is of the opinion that the applicants are responsible for delay in trial that fact be recorded in the Rozanama, which can be a ground for cancellation of bail.

(e) The applicants shall not influence the prosecution witness or tamper with the prosecution evidence in any manner whatsoever.

4. Ordered accordingly.

.....